

JOE I. AND CELINA V. SANCHEZ, ET AL.

IBLA 77-315, 77-316, 77-317

Decided September 20, 1977

Appeals from decisions of the New Mexico State Office, Bureau of Land Management, rejecting color of title applications NM 18335, NM 18398 and NM 18399.

Set aside and remanded.

1. Color or Claim of Title: Generally--Color or Claim of Title:
Applications--Color or Claim of Title: Good Faith

Where an applicant under the Color-of-Title Act applied for a grazing lease for the lands he now seeks to acquire via color of title prior to the time of his acquisition of putative title, he has not demonstrated good faith and his application is properly rejected.

2. Color or Claim of Title: Generally--Color or Claim of Title:
Applications--Color or Claim of Title: Good Faith

An applicant who believes or has reason to believe that title to land is in the United States at the time when he acquires it from his predecessor in interest does not hold color or title in good faith.

3. Color or Claim of Title: Generally--Color or Claim of Title:
Applications--Color or Claim of Title: Good Faith

The possession of ancestors of the grantors may be tacked on to satisfy the statutory period; however, if the ancestors' possession is not in good faith, the

chain of title has been broken, the holding period of the ancestors may not be tacked on and the statutory period begins to run anew.

4. Federal Employees and Officers: Authority to Bind Government

Reliance upon erroneous or incomplete information provided by BLM personnel cannot create any rights not authorized by law.

5. Color or Claim of Title: Generally--Rules of Practice: Appeals: Hearings

The obligation to establish a valid color of title claim is upon the claimant. Where a claimant has alleged facts which, if proven, may establish his color of title, the Board of Land Appeals may order a fact-finding hearing pursuant to 43 CFR 4.415.

APPEARANCES: Joe I. and Celina V. Sanchez, Embudo, New Mexico, pro se; Danny and Randy Sanchez, Embudo, New Mexico, pro se; Casey Sanchez and Annabelle Bustos, Embudo, New Mexico, pro se.

OPINION BY ADMINISTRATIVE JUDGE RITVO

These are three consolidated appeals from March 30, 1977, decisions of the New Mexico State Office, Bureau of Land Management (BLM), rejecting applications under the Color of Title Act of Dec. 22, 1928, as amended, 43 U.S.C. § 1068 et seq. (1970). 1/ Appellants Jose I. Sanchez and Celina V. Sanchez are the parents of the appellants in the other two cases. They also were the grantors of the land to their children. Since the children's claims flow from their parents' claim, if the parents' claim fails, the children's must, too. We will discuss the parents' claim first.

Appellants Joe and Celina Sanchez filed their applications on March 23, 1973, for 160 acres in section 21, T. 23 N., R. 10 E., N.M.P.M., New Mexico. 2/ The State Office rejected their

1/ 77-315 Annabelle Bustos and Casey Sanchez NM 18398.

77-316 Danny A. Sanchez and Randy Sanchez NM 18399.

77-317 Joe I. Sanchez and Celina V. Sanchez NM 18335.

2/ NM 18398 filed on March 29, 1973, is for 164.15 acres located in sections 20, 21, 28, and 29, T. 23 N., R. 10 E., N.M.P.M. NM 18399 filed March 29, 1973, is for 160 acres in section 20, T. 23 N., R. 10 E., N.M.P.M.

application on the grounds that appellants are not entitled to a patent under the Color-of-Title Act having not acquired color-of-title in good faith because they knew the lands were public land.

Appellants' chain of title begins with a deed from Ms. Dionisia L. de Lopez to Antonio Y. Roybal dated November 18, 1905, described as "concerning 700 'varas'" in width and with boundaries as follows: to wit, in the east, by lands of Delinvina Dominguez; in the west, by lands of the pond; in the north, by the Rio del Norte; and in the south, by the Rio del Embudo. A vara is equivalent to 33 inches. The next link in the chain is a deed from Deluvina Dominguez y. Dixon to Jose Pablo Lujan dated April 8, 1909, for land referred to by the abstract as tracts 1 and 2 (see Appendix). Next is a deed dated March 3, 1925, from Antonio Y. Roybal to Jose Pablo Lujan for land known as tract 3 in the abstract of title (see Appendix). Then there is a deed dated December 30, 1937, from Mrs. J. P. Lujan to Eloy Lujan for tracts 1, 2, and 3. There is also a patent from the United States dated January 24, 1950, to Eloy Lujan for 10.578 acres in sections 20 and 21, T. 3 N., R. 10 E., N.M.P.M., and also a deed, dated April 3, 1967, from Eloy A. Lujan to Joe I. and Celina V. Sanchez for tracts 1, 2, and 3. Finally there are two deeds both dated December 15, 1970, from Jose and Celina Sanchez to Danny and Randy Sanchez, and to Casey Sanchez and Annabelle Bustos for part of the land the Sanchez parents received from Eloy Lujan.

3/ The grant to Danny and Randy Sanchez is described as follows:

"A certain portion of land consisting of 160 acres, more or less, being a portion of Section 20 and including Lot 5 in said Section 20, T. 3 N., R. 10 E., N.M.P.M., New Mexico. Said portion is being bounded on the North by the Rio Grande River and by property of Dionisia Lujan de Lopez; on the South by property of Casey Sanchez and Annabelle Bustos; on the East by property of Grantors herein; and on the West by properties of the Presbyterian Hospital and Gonzalez."

The grant to Casey Sanchez and Annabelle Bustos is described as follows:

"A certain portion of land consisting of 160 acres, more or less, being a portion of Sections 20, 21, 28 and 29, all in T. 23 N., R. 10 E., N.M.P.M., New Mexico, and more particularly described as lying 51.99 acres in Section 20; 55.27 acres in Section 21; 32.53 acres in Section 28; and 24.36 acres in Section 29.

"Said portion is being bounded on the North by properties of Danny A. Sanchez, et al., and Jose I. Sanchez, et al.; on the South by Small Holding Claims in Section 29 and 28, T. 23 N. of R. 10 E., and on the East and West by lands known as property of the Bureau of Land Management."

On December 17, 1962, Joe Sanchez inquired of the BLM as to how he could purchase or lease lands in the area of Dixon, New Mexico. The general area includes lands in sections 20, 21, 28, and 29 which are included in his color-of-title application. During March 1964 he filed an application for grazing leases with the Bureau.

His first lease application having been returned in April 1964 because it was filed too late, Mr. Sanchez filed another application for a grazing lease later in the year. However, this application was also rejected, because the Community allotment was overstocked. Thereafter, on November 10, 1965, Mr. Sanchez filed for free grazing use privileges and the BLM requested he submit a letter stating the reasons for free use.

In his letter of December 1, 1965, Mr. Sanchez offered to pay for grazing privileges, and finally, on December 23, 1965, his applications for a license under the Taylor Grazing Act was approved.

The State Office rejected appellants' color-of-title claim because, in its analysis, the filing for grazing applications by the appellants prior to their acquisition of the land from Eloy Lujan, negated the good faith requirement of the Color-of-Title Act. Appellants counter it was well known in the community the land belonged to J. P. Lujan, the father of Eloy Lujan from whom they received their warranty deed. When appellants attempted to ascertain the boundaries of the land in accordance with the description, they discovered no patent was ever issued for Tracts 2 and 3. Appellants contest the conclusion of the State Office that they (the appellants) knew the land was public land based on their December 1962 inquiry about purchasing lands in the area, because their inquiry was not directed towards any particular land. However, they do not deny inquiring about grazing licenses and having filed successful applications for grazing licenses. Appellants also assert it was not until 1970 that they received a map showing their grazing areas, and when received the map was vague and incomprehensible and served no purpose.

Appellants state it was not until July 1972 that they knew the land was public land. They also assert BLM personnel led them to believe there would be no difficulty in obtaining patents for the land and they would be forthcoming.

[1, 2] This case involves class 1 claims for color-of-title under 43 CFR 2540.0-5. 4/ An essential element of a color of title

4/ A claim of class 1 is one which has been held in good faith and in peaceful adverse possession by a claimant, his ancestors or grantors, under claim or color of title for more than 20 years, on which valuable improvements have been placed, or on which some part of the land has been reduced to cultivation.

claim is the good faith requirement. The aforementioned regulation states: "[a] claim is not held in good faith where held with knowledge that the land is owned by the United States."

Since appellants have not themselves held the lands applied for for 20 years, they must rely on the fact that their predecessor in interest held the land in good faith. Otherwise they could not satisfy the 20-year requirement. It has been held previously that application for a grazing lease is recognition that title for the land is in the United States. Phyllis de Young Tucker, A-26984 (November 26, 1954). An applicant who believes that title to the land is in the United States at the time when he acquires it from his predecessors in interest does not hold color of title in good faith. The fact that the land may have been held by other persons in good faith for more than 20-years under color of title does not justify the issuance of a patent under the Color-of-Title Act to one who thereafter purchases the land with knowledge that title was in the United States. Jacob Dykstra, 2 IBLA 177 (1971).

On the facts of this case we are not prepared to state, without further development of the facts at a hearing, that appellants believed at the time they acquired the lands applied for that title to such lands was in the United States. The Community Allotment is very large in comparison with the lands applied for, and it is difficult to know whether the grazing applications included land now sought under the Color-of-Title Act. If the lands are the same, then the good faith requirement of a color of title claim will not have been satisfied.

[3] The two applications under the Color-of-Title Act by the grantor's children will also be considered at the hearing. Joe and Celina Sanchez precede their children in the children's chain of title for the lands. As stated previously, the success of the childrens' claims depend upon the success of their parents' claim. It is possible to tack on the possession of ancestors as grantors; however, that possession, like the possession of the applicant, must have been in good faith. Phyllis de Young Tucker, *supra*. The possession of the grantor cannot be tacked on to that of an applicant where the grantor did not have reason to believe he had title to the land. Nora B. K. Howerton, 71 I.D. 429 (1964). The children, of course, must also establish that they did not know title to the land in their respective applications was in the United States at the time they acquired it.

Where the immediate predecessor has not taken title in good faith, the claim of title has been broken and the statutory period begins to run anew. Once the property came into the possession of one who could not himself acquire land under the Color-of-Title Act, his successors are then also barred until the statute has again been satisfied. Prentis E. Furlow, 70 I.D. 500 (1963).

[4] Appellants also claim BLM personnel informed them the patents would be forthcoming and they would have no difficulty in obtaining them in view of the documentation accumulated in support of their claims. It is unfortunate if BLM personnel made such statements raising appellants' expectations. However, reliance upon erroneous or incomplete information provided by BLM personnel cannot create any rights not authorized by law. John F. Brown, 22 IBLA 133 (1975).

[5] The obligation to establish a valid color of title claim is upon the claimant. 43 U.S.C. § 1068 (1970); Mable M. Farlow, 30 IBLA 320 (1977). Appellants should have the opportunity to develop their case at a hearing where they will be able to present testimony as well as documentary evidence, and where the BLM may present its own evidence, if it desires. Therefore, we order a fact-finding hearing to be held before an Administrative Law Judge pursuant to 43 CFR 4.415. See Sun Studs, Inc., 27 IBLA 278, 294, 83 I.D. 518, 525-526 (1976). The issues at the hearing may include all matters relevant to showing entitlement under the Color-of-Title Act, including the relation and adequacy of the land descriptions in appellants' chain of title to the land applied for, whether they knew, or had reason to believe that, title of the land was in the United States when they acquired title to their respective claims, the good faith of their predecessors in title and the satisfaction of the requirement that there be improvements on the land or that it have been cultivated.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decisions appealed from are set aside and the case is referred to the Hearings Division for appropriate action. 5/

Martin Ritvo
Administrative Judge

We concur:

Frederick Fishman
Administrative Judge

Joan B. Thompson
Administrative Judge

5/ On August 25, 1957, Casey T. Sanchez and Annabelle Bustos withdrew their appeal as to .54 acres situated in sec. 28, T. 23 N., R. 10 E., lot 3, Number 1602. The appeal is dismissed as to the .54 acres.

APPENDIX

TRACT I

A tract or parcel of land lying and being situate in the vicinity of Embudo, in the County of Rio Arriba, State of New Mexico, within Sections 20 and 21, Township Twenty-three (23) North, Range Ten (10) East, N.M.P.M., more particularly described as follows: "Bounded on the North by U.S. Highway 64; on the South by BLM; on the West by Silas Valdez; on the East by BLM." (Unsurveyed)

TRACT II

A tract or parcel of land lying and being situate in the vicinity of Embudo, in the County of Rio Arriba, State of New Mexico, within Sections 28 and 29, Township Twenty-three (23) North, Range Ten (10) East, N.M.P.M., more particularly described as follows: "A portion of land bounded on the North by Taos Highway; on the East by land formerly of Thomas McQuistin and Public Domain; on the South by Small Holding Claims in Section 28 and 29, on the West by Mrs. J. P. Lujan." (Unsurveyed)

TRACT III

A tract or parcel of land lying and being situate in the vicinity of Embudo, in the County of Rio Arriba, State of New Mexico, in Sections (28) and in (29) Township Twenty-three (23) North, Range Ten (10) East, N.M.P.M., more particularly described as follows: "A portion of land located south of Taos Highway (old) measuring 700 yards wide and bounded as follows: On the North by Antonio Roybal; on the East by Tract 2; on the South by Small Holding Claims in Section 29, on the West by Public Domain." (Unsurveyed)

